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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,371	03/31/2004	Brant L. Candlore	80398P252X2	8254
8791 7590 05/27/2009 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
DOAN, TRANG T				
ART UNIT		PAPER NUMBER		
2431				
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05/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,371

Applicant(s)

CANDELORE, BRANT L.

Examiner

TRANG DOAN

Art Unit

2431

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-22 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the RCE filed on 03/02/2009.
2. Claim 1 has amended.
3. Claims 16-22 have added.
4. Claims 1-22 are pending for consideration.

Continued Examination Under 37 CFR 1.114

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/02/2009 has been entered.

Response to Arguments

6. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Regarding to claim 22, the limitation "encrypted differently than the data contained in the payload of the first packet" is not clear to Examiner what the applicant means by the phrase "differently" because the data in the payload of the first packet is not even encrypted.

Double Patenting

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1, 6, 8-11, 13, 15-20 and 22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4, 9, 12, 14, 24-

26, 31-32, 39-40, 45-46, 51-52, 58-60, 66 and 68 of U.S. Patent No. 7127619. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are anticipated by the claims of U.S. Patent No. 7127619 in that claims 4, 9, 12, 14, 24-26, 31-32, 39-40, 45-46, 51-52, 58-60, 66 and 68 of the patent contain all the limitations of the instant application. Claims 1, 6, 8-11, 13, 15-20 and 22 of the instant application therefore are not patentably distinct from the earlier patent claim and as such are unpatentable for obvious-type double patenting.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amit et al. (Pub. No. 2002/0131426) (hereinafter Amit) in view of Herley et al. (U.S. Patent No. 6976166) (hereinafter Herley).

14. Regarding claim 1, Amit discloses a method for providing content from a head-end to a digital device, comprising: producing an Internet Protocol (IP) datagram including an IP header and a body that includes a plurality of packets in a Moving Picture Experts Group (MPEG) format, the plurality of packets including a first packet

and a second packet preceding the first packet (Amit: paragraph 0012: transmitting data comprising receiving a data stream comprising packets to send to a receiving device), the first packet including a first packet identifier to indicate a type of data stored in a payload of the first packet and a second packet including a secondary packet identifier to indicate that the second packet includes data that is (i) duplicative of the data contained in the payload of the first packet, and to cause the digital device to discard the data content contained in the first packet (Amit: paragraphs 0072, 0074 and 0075); and transmitting the IP datagram from the head-end (Amit: paragraph 0010).

Amit does not disclose the second packet includes data that is encrypted differently than the data contained in the payload of the first packet. However, Herley discloses the second packet includes data that is encrypted differently than the data contained in the payload of the first packet (Herley: column 3 lines 21-29). It would be obvious to one of ordinary skill in the art at the time of the invention to combine Amit's detection method of duplicative packets with Herley's apparatus for maintaining security in a communication path. One of ordinary skill in the art would have been motivated to use the different encryption methods on the first and second packet because secure transmission of information is of concern when transferring content over a public network such as the Internet (Herley: column 1 lines 11-13).

15. Regarding claim 2, Amit as modified discloses wherein the first packet identifier is a unique value to indicate whether the payload of the first packet includes video,

audio or data (Herley: column 3 lines 1-6). The same motivation was utilized in claim 1 applied equally well to claim 2.

16. Regarding claim 3, Amit as modified discloses wherein the IP header comprises a version field to identify an IP version number, a length field to indicate either a length of the IP datagram or a length of the IP header, a source address field to include an IP address of the head-end and a destination address field to include an IP address of the digital device (Amit: paragraphs: 0004, 0059, 0062, 0065 and 0069).

17. Regarding claim 4, Amit as modified discloses wherein a header of the first packet comprises the first packet identifier (Amit: paragraphs: 0029 and 0069).

18. Regarding claim 5, Amit as modified discloses determining whether the destination address field of the IP header is loaded with a multicast IP address, if video is to be transmitted, each of the plurality of packets exclusively comprises a PID having a first value; and if audio is to be transmitted, each of the plurality of packets exclusively comprises a PID having a second value differing from the first value (Amit: paragraphs: 0033, 0036, 0044-0045, 0069, 0072-0073 and 0076).

19. Regarding claim 6, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

20. Regarding claim 7, Amit as modified discloses wherein the second packet precedes the first packet (Herley: column 5 lines 22-36). The same motivation was utilized in claim 1 applied equally well to claim 7.

21. Regarding claims 8, 16 and 19, Amit as modified discloses wherein content stored in the payload of the first packet is video encrypted using a first key and the duplicative content in the payload of the second packet is the video encrypted using a second key different than the first key (Herley: column 3 lines 21-29). The same motivation was utilized in claim 1 applied equally well to claims 8, 16 and 19.

22. Regarding claims 9, 17 and 20, Amit as modified discloses wherein content stored in the payload of the first packet is video encrypted using a first encryption algorithm and the duplicative content in the payload of the second packet is the video encrypted using a second encryption algorithm different than the first encryption algorithm (Herley: column 3 lines 21-29). The same motivation was utilized in claim 1 applied equally well to claims 9, 17 and 20.

23. Regarding claim 10, Amit as modified discloses wherein content stored in the payload of the first packet is audio encrypted using a first key and the duplicative content in the payload of the second packet is the audio encrypted using a second key different than the first key (Herley: column 3 lines 21-29). The same motivation was utilized in claim 1 applied equally well to claim 10.

24. Regarding claim 11, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

25. Regarding claim 12, Amit as modified discloses wherein the third program block disregards the content contained in the payload of the first packet by discarding the content contained in the payload of the first packet and thereby refraining from recovering the payload of the first packet when the second packet identifier of the second packet preceding the first packet is set to a predetermined value (Amit: paragraphs 0072, 0074 and 0075).

26. Regarding claim 13, Amit as modified discloses wherein the duplicative content contained in the payload of the second packet is video encrypted using a first key and the content in the payload of the first packet is the video encrypted using a second key different than the first key (Herley: column 3 lines 21-29). The same motivation was utilized in claim 1 applied equally well to claim 13.

27. Regarding claim 14, Amit as modified discloses a fourth program block to provide the duplicative content to a descrambler situated within a digital device (Herley: column 5 lines 22-36). The same motivation was utilized in claim 1 applied equally well to claim 14.

28. Regarding claim 15, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

29. Regarding claim 18, Amit as modified discloses wherein the content stored in the payload of the first packet and the duplicative content stored in the payload of the second packet is identical audio that is encrypted differently (Herley: column 3 lines 21-29). The same motivation was utilized in claim 1 applied equally well to claim 18.

30. Regarding claim 21, Amit as modified discloses wherein the data stored in both the payload of the first packet and the payload of the second packet is audio (Amit: paragraph: 0074).

31. Regarding claim 22, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRANG DOAN whose telephone number is (571)272-0740. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William R. Korzuch can be reached on (571) 272-7589. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Trang Doan/
Examiner, Art Unit 2431

/William R. Korzuch/
Supervisory Patent Examiner, Art
Unit 2431